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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., *et al.*,
Petitioners,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

CONSUMER ALERT AND PACIFIC LEGAL FOUNDATION,
Petitioners,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents,

UNITED STATES DEPARTMENT OF TRANSPORTATION, *et al.*,
Petitioners,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF *AMICUS CURIAE* MOTHERS AGAINST DRUNK DRIVERS

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BRIEF OF *AMICUS CURIAE* MOTHERS AGAINST DRUNK DRIVERS

INTEREST OF AMICUS CURIAE

Mothers Against Drunk Drivers (MADD) is a nationwide organization, headquartered in Fair Oaks, California, with 106 chapters in 34 states. MADD's members are concerned citizens and victims of those killed or maimed in accidents caused by drunk drivers. MADD works for reduction in highway deaths and injuries, especially those caused by drunk drivers, through a variety of efforts, in-

cluding the monitoring of local court sentencings for drunk driving offenses, conducting educational programs and publishing literature to disseminate information about the dangers posed by drunk drivers, and providing counseling services to assist families of victims of accidents caused by drunk drivers.

MADD and its members support passive restraints as necessary equipment to save lives and prevent injuries resulting from auto accidents, especially of those innocent victims of drunk drivers.

QUESTION PRESENTED

When there exist proven and effective passive restraints that will accomplish the Congressional purpose to save lives and prevent injuries, was the rescission of the motor vehicle passive restraint standard by the National Highway Traffic Safety Administration arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law?

STATEMENT OF THE CASE

The factual record, extensive rulemaking over more than a decade and multiple lower court review are well summarized in the Court of Appeals opinion and in the briefs of State Farm Mutual Automobile Insurance Co. (State Farm) and the National Association of Independent Insurers (NAII). MADD joins these statements and makes these additional points:

– Each year over 50,000 people die in highway accidents in the U.S. *Accident Facts, 1982 Edition,* at 58 (National Safety Council) (hereafter "Accident Facts"). The use of alcohol by drivers and pedestrians leads to some 25,000 of these deaths. *1968 Alcohol and Highway*

Safety Report at 1 (U.S. Department of Transportation, National Highway Traffic Safety Administration).

— In 1981 1.9 million[1] Americans suffered disabling injuries in highway accidents. Of those injured, some 150,000 suffered permanent impairments. *(Accident Facts,* p. 3) The percentage of these that were alcohol related is not precisely known, but it is likely about 25 percent.

— Accident data demonstrate that the more severe the crash and resulting injury, the higher percentage that are alcohol related. Typically, in the U.S. alcohol plays a role in less than 10 percent of run-of-the-mill crashes, about 20 percent of crashes involving serious injury to driver or passenger, about 50 percent of all fatal crashes, and about 60 percent of single-vehicle fatal crashes. Ross, *Deterring the Drinking Driver, Legal Policy and Social Control* (Heath & Co. 1982) at xiv.

SUMMARY OF ARGUMENT

Given the evidentiary record before the agency, the Court of Appeals properly overturned NHTSA's rescission of the passive restraint standard. Not only did the agency fail to support its rescission with any evidence, but the only evidence regarding passive restraint systems already on the road thoroughly documented the enormous life-saving and injury-prevention potential of installation of passive restraints in all new cars. Under these facts,

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[1]Using a slightly broader definition of injury that counts all instances in which activity was restricted for at least the day of the incident, the National Health Survey, U.S. Department of Health and Human Services, Public Health Service, National Center for Health Statistics, reports some 4.4 million injuries in highway accidents in 1980. (*Current Estimates for the National Health Interview Survey: United States 1980;* Series 10, Number 139, p. 19)

quarrels about the proper standard of review are beside the point, since the Court of Appeals decision must be sustained on any standard.

Moreover, NHTSA's decision to disregard proven passive restraint technology by relying on public education campaigns to increase seat belt usage and on statements by some automakers that they would install assertedly ineffective passive restraint systems constituted a clear flouting of the agency's statutory mandate. The Court of Appeals properly held that the agency could not so narrow its options "that it fails to heed the goals that Congress has asked it to meet", hence violating its "basic legislative mandate". *State Farm Mutual Automobile Insurance Co.* v. *Departmer' of Transportation,* 680 F.2d 206, 230 (D.C. 1982)

ARGUMENT

I. PASSIVE RESTRAINTS IN AUTOMOBILES WOULD PROVIDE SUBSTANTIAL PROTECTION OVER THE LITTLE-USED MANUAL BELTS AND WOULD SAVE LIVES AND PREVENT INJURIES, INCLUDING THOSE OF INNOCENT VICTIMS OF DRUNK DRIVERS.

Highway deaths and injuries are a staggering and terrible human and economic drain on our society. The toll on our children is especially tragic. Highway injuries are the leading cause of death until age 34. *Motor Vehicle Safety 1980* at A-34-35 (A Report on Activities Under the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act of 1972, Jan. 1, 1980-Dec. 31, 1980; National Highway Traffic Safety Administration). A 15-year-old boy faces one chance in 100 of being killed in an automobile crash before he is 25. *Technology and Handicapped People: Background Paper #1: Mandatory Passive Restraint Systems in Automobiles: Issues and Evidence* at 7 (Congress

of the United States, Office of Technology Assessment, September, 1982). A serious and disabling injury to anyone is tragic, but it is especially so for a child.

As documented above, much of this death and injury results from alcohol-related automobile crashes. This grim toll must be reduced by the implementation of two general strategies: (1) changing drivers' behavior so they don't drive after drinking and (2) making automobiles more crashworthy so that fewer people are killed or injured in the accidents that do occur.

MADD supports both strategies. Principally it works towards changing society at large and the perception of each American driver of the unacceptability of drinking and driving. This process will require changes in laws, institutions and, most basically, individual attitudes and will take years of concerted effort to achieve.

While changes in attitude and behavio[illegible] are occurring and even after the maximum changes feasible are obtained, alcohol will unfortunately likely continue to be a significant factor in highway death and injury. Thus, prevention of death and injury in accidents caused by drunk drivers will always be important. Moreover, saving lives and preventing injuries in non-alcohol related crashes is also important and is now and will remain a goal of MADD.

For these reasons, MADD supports the installation of the proven passive restraints which, by NHTSA's own estimates, will save approximately 7,000 lives each year and prevent hundreds of thousands of injuries when installed in all cars.[2] Taking the highly conservative estimate

[2]In 1977, NHTSA estimated that even with usage of only 60 percent, installation of automatic seat belts alone would save 6,800 lives and prevent 78,000 injuries each year compared to manual seat belts. 42 Fed. Reg. 34289, 34298 (July 5, 1977) (C.A. App. 1734, 1743). The

that 25 percent of the deaths and injuries resulting from auto accidents are alcohol related, approximately 1,800 deaths and over 25,000 injuries per year that would otherwise be due to alcohol related causes could be avoided each year through the installation of passive restraints of proven reliability in all new cars.

II. OBJECTIONS TO THE STANDARD OF REVIEW EMPLOYED BY THE COURT OF APPEALS ARE UNFOUNDED, AND, IN ANY EVENT, DO NOT WARRANT REVERSAL OF ITS DECISION.

Petitioners make a great deal of alleged errors in the selection and application of the standard of review by the court below. All agree, however, that after some discussion the Court of Appeals applied the traditional "arbitrary and capricious" test of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). MADD submits that for the reasons stated in the briefs of respondents State Farm and NAII that standard of review is proper. The Court of Appeals should be affirmed on that point regardless of whether this Court finds any flaws in the Court of Appeals' reasoning in adopting that standard.

Moreover, arguments that another, narrower standard or a narrower application of the "arbitrary or capricious"

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most recent agency estimates indicated that if the rate of increased usage of 39 percent found in the 1980 Chevette (that was equipped with a non-detachable automatic seat belt) were attained in all new cars, approximately 7,000 fewer people would die and 130,000 fewer injuries would occur over the lifetime of the autos sold in each model year. NHTSA Regulatory Analysis at IV-61, 62 (October 1981) (C.A. App. 117, 118).

standard is appropriate for "deregulation" in general have little force and should be rejected in the circumstances of this case. NHTSA's rescission is not at all analogous to a refusal to enter a new regulatory area. Neither is it a pull-back after a preliminary step was taken but before some threshhold had been crossed. Nor is it an example of deregulation under a statutory scheme that merely requires an agency to implement the "public interest" — an admittedly shifting concept — in an area of substantial tension between competing interests.

Standard 208 and, NHTSA itself, is a creation of the National Traffic and Motor Vehicle Safety Act in which Congress very clearly directed that safety be paramount. The passive restraint portion of Standard 208 was a result of the announced intention of the Department of Transportation as far back as 1969 to obtain automatic protection for automobile occupants because of disappointingly low manual belt usage. And the passive restraint standard prior to rescission was the culmination of 13 years of rulemaking, of development and testing by manufacturers and of proof of the practicability and protectiveness of passive restraints in actual use by American drivers. In these circumstances, no narrower standard of review than the already deferential "arbitrary and capricious" test is justified, irrespective of the merits, if any, of applying a narrower standard in any other case.

In any event, given the bare evidentiary record upon which NHTSA's rescission rested, the agency's elimination of the passive restraint standard was arbitrary and capricious under any standard of review. The Court of Appeals found that NHTSA offered "not one iota of evidence" to support its conclusion that nationwide belt usage would fail to increase by the 13 percentage points that the agency's analysis indicated was required to make the stan-

dard cost-effective. 680 F.2d at 231. Indeed, the only evidence before the agency established that automatic belt systems now on the road have increased usage rates by substantially more than the 13 percentage points threshhold.

Against such a background, disputes about the precise content of the standard of review in this case is akin to asking how many angels can dance on the head of a pin. The fact is that NHTSA's rescission was totally unsupported, a conclusion that cannot be altered by chipping away at the standard of review.

III. THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S RATIONALE FOR RESCINDING THE STANDARD WAS IRRATIONAL AND CONTRARY TO THE PURPOSE AND DESIGN OF THE AGENCY'S STATUTORY MANDATE.

NHTSA's rationale for rescission flies in the face of Congressional direction in the National Traffic and Motor Vehicle Safety Act of 1966. In that law Congress directed NHTSA to adopt mandatory standards[3] for the paramount purpose of saving lives and preventing injuries. 15 U.S.C. § 1381. NHTSA's rescission is inconsistent both with the Congressional purpose and the Congressional direction to use mandatory safety standards for its implementation.

Congress understood well the distinction between the two strategies of, on the one hand, changing driver behavior to prevent accidents and, on the other hand, changing

[3]15 U.S.C. § 1392(a) provides: "The Secretary *shall* provide by order appropriate Federal motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms." (Emphasis added).

automobiles to make them more crashworthy to reduce deaths and injuries when accidents happen. By its choice of mandatory safety standards, Congress directed NHTSA to pursue the latter strategy under the National Traffic and Motor Vehicle Safety Act of 1966 while authorizing NHTSA to take other steps, including attempting to change driver behavior, under different legislation, the Highway Safety Act of 1966, P.L. 89-564, 23 U.S.C. § 401 *et seq.* *See* Hearings on S. 3005 before the Senate Commerce Committee, 89th Congress, 2d Session 47 (1966) (Statement of Sen. Ribicoff). In explaining the reasons for the Congressional choice of method, Representative Mackay said bluntly "[I]t is easier to change cars than people," 112 Cong. Rec. H18,789 (daily ed. Aug. 7, 1966). Representative Springer added: "Knowing the realities of life we also know that no . . . utopia will be forthcoming and that accidents will continue to happen. That being the case, we need to minimize the damage to life and limb which will be caused by the second collision." 112 Cong. Rec. H18,779 (daily ed. Aug. 17, 1966).

NHTSA's reliance on public education campaigns to change driver behavior by "buckling-up" existing manual belts, while acceptable in its own right, is inconsistent with Congressional direction to use mandatory safety standards *when presented as a substitute for the passive restraint standard.* In sum, the rescission violates the purpose of the National Traffic and Motor Vehicle Safety Act and the Congressional directive to require the industry to produce more crashworthy autos.

The rescission was plainly irrational and also contrary to the agency's statutory mandate because it was based on assertions by some members of the regulated industry that they would comply with the standard, not with the effective equipment already developed and proved on cars in

this country, but with newly designed, avowedly inferior passive belts. As the Sixth Circuit stated in *Chrysler Corporation* v. *DOT*, 472 F.2d 659, 671 (6th Cir. 1972): "[t]he explicit purpose of the Act, as amplified in its legislative history, is to enable the Federal Government to *impel* automobile manufacturers to develop and apply new technology to the task of improving the safety design of automobiles as readily as possible." (emphasis added). Given the proven effectiveness of passive restraint systems in cars already on the road, NHTSA's capitulation to the transparent manipulation by the auto industry expressly contravenes this statutory mandate.

This capitulation to the regulated industry is also inconsistent with the Congressional premise in enacting the National Traffic and Motor Vehicle Safety Act that industry volunteerism had not and could not in the future be relied on to achieve the necessary safety improvements. This premise of the National Traffic and Motor Vehicle Safety Act is well demonstrated in the brief of NAII and of *amicii curiae* Center for Auto Safety, Public Citizen and Physicians for Automotive Safety in this Court, and MADD will not repeat it here. MADD submits to this Court that given this premise, NHTSA's reliance as a basis for rescission on newly proferred and allegedly inferior technology is an acceptance by NHTSA of volunteerism by auto manufacturers at the expense of mandatory standards. As such, it is another basis for overturning the rescission.

CONCLUSION

For these reasons and to save our children and adults threatened by death or injury on the highway, the decision below should be affirmed.

Respectfully submitted,

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